

REMARKS

This application has been reviewed in light of the Office Action dated April 27, 2009. Claims 1-8 and 11-16 are presented for examination, with Claims 1, 15, and 16 being in independent form. Claims 9 and 10 have been cancelled, without prejudice or disclaimer of the subject matter presented therein. Claims 1, 11, 12, 15 and 16 have been amended to define Applicants' invention more clearly. Favorable reconsideration is requested.

The Office Action states that Claims 1-11, 13 and 15-16 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Appln. Publication No. 2007/0118461 (*Arkes*), in view of U.S. Patent Appln. Publication No. 2002/0116316 (*Griffiths*); Claim 12 is rejected under § 103(a) as being unpatentable over *Arkes* in view of *Griffiths* and further in view of U.S. Patent Appln. Publication 2004/0260645 (*Yakos*) and U.S. Patent Appln. Publication 2002/0062249 (*Iannacci*); Claim 14 is rejected under § 103(a) as being unpatentable over *Arkes* in view of *Griffiths* and further in view of U.S. Patent Appln. Publication 2004/0015394 (*Mok et al.*, hereinafter *Mok*). Applicants respectfully traverse these rejections and submit that independent Claims 1, 15, and 16, together with the claims dependent thereon, are patentably distinct from the cited prior art for at least the following reasons.

Applicants have amended Claim 1 to incorporate all the material aspects of former Claim 10, and former Claim 9 from which Claim 10 depended. Accordingly, Claims 9 and 10 have been canceled. Thus, Applicants respectfully submit that amended Claim 1 is the same scope as former Claim 10.

On page 7, the Office Action states that *Arkes* discloses the steps found in former Claim 10, now in amended Claim 1, namely the steps that occur “when the account balance of the participant does not cover the winning bid.” These steps comprise:

- a) querying the auction system for the next highest bid amount; b) verifying that the next highest bid exceeds any minimum bid amount set for the auction item; c) verifying that the participant of the next highest bid has an account balance to cover the next highest bid; and d) repeating steps a) – c) until a participant has an account balance to cover the next highest bid.

In support of this assertion, the Office Action states that *Arkes* discloses these features in paragraph 50. To assist the Office in appreciating the subject matter of *Arkes*, the referenced paragraph is reproduced below.

Another points-to-dollars ratio provides a gauge with respect to whether a bidder has over-bid an auction item. An estimated points to retail dollar value ratio is initially determined. After an auction is concluded, if the converted dollar value of a bid exceeds the manufacturer's suggested retail price, then the winning bidder is credited back points so that the winning bid is equal to the manufacturer's suggested retail price. Yet another over-bid protection method is described herein below where the winning bid is compared to the regular catalog point value for the item and the overbid amount is credited to the winning participant. Finally, a dollars-to-points ratio is utilized to enable participants to increase their available point total when bidding upon an item. The point purchase option is discussed herein below in conjunction with FIG. 10.

Applicants have carefully studied that portion of *Arkes*, and *Arkes* as a whole, and are unable to agree with the Office Action's characterization of that reference for the following reasons.

The cited portion from *Arkes* considers a situation where a bidder has over-bid an auction item, not when the participant's balance does not cover the winning bid. Nowhere in the above-cited portion or in *Arkes* considers the situation of iteratively finding the next highest bidder when the first bidder does not have enough reward points. Thus, *Arkes* does not disclose, teach or suggest all the features of former Claim 10.

Considering *Arkes* as a whole shows that *Arkes* does not disclose, teach, or suggest all the features of amended Claim 1. Paragraphs 60-63 of *Arkes* state that bids are not entered if a participant does not have sufficient points to enter a particular bid. *Arkes*, however, does not consider a situation where the participant that submitted the highest bid does not have enough reward points to complete the transaction. Thus, *Arkes* cannot possibly disclose, teach or suggest “terminating the ability,” “determining a winning bid,” “verifying that the participant,” “querying the auction system,” “verifying that the next highest bid exceeds any minimum bid,” and “repeating steps” of amended Claim 1.

Applicants further respectfully submit that *Griffiths* fails to compensate for the deficiencies of *Arkes*. As understood by Applicants, *Griffiths* is directed to an auction manager system that includes a master listing system that consolidates online auction listings from multiple sites. See *Griffiths*, abstract and paragraph 1. Further, *Griffiths* does not disclose, teach or suggest a situation where a participant's balance does not cover the winning bid as required by former Claim 10, now amended Claim 1. *Griffiths* contemplates coordinating post-auction closing. However, to the extent that *Griffiths* discusses notifying the next highest bidder in the event that a bidder does not pay for a lot, *Griffiths* does not disclose, teach or suggest the situation where a participant's reward balance does not cover

the winning bid. Additionally, *Griffiths* fails to disclose, teach or suggest the steps a) – d) claimed in amended Claim 1. *See Griffiths*, paragraph 26.

A review of *Yakos*, *Iannacci*, and *Mok* has failed to reveal anything that, in Applicants' opinion, would remedy the deficiencies of the art discussed above, as applied against the claims herein.

For at least these reasons, Applicants submit that the Office cannot sufficiently establish a *prima facie* case of obviousness against Claim 1 in view of the cited art, and that the various proposed combinations of *Arkes*, *Griffiths*, *Yakos*, *Iannacci*, and *Mok*, even if deemed legally permissible or technically feasible, would fail to arrive at Claim 1.

Accordingly, the rejection under 35 U.S.C § 103(a) is believed obviated, and its withdrawal is respectfully requested.

Claims 2-8 and 11-14 in this application are each dependent from Claim 1 and are therefore believed patentable for the same reasons. Since each dependent claim is also deemed to define an additional aspect of the invention, however, the individual reconsideration of the patentability of each on its own merits is respectfully requested.

Claims 15 and 16 have been amended to define Applicants' invention more clearly. More specifically, Claims 15 and 16 further define operations by the system to obtain reward balances via interactions with an auction system and an account manager. Support for this amendment is found at least at paragraph 70. Applicants respectfully submit that neither *Arkes* nor *Griffiths*, either singly or in combination, disclose, teach or suggest the features of amended Claims 15 and 16.

Furthermore, a review of *Yakos*, *Iannacci*, and *Mok* has failed to reveal anything that, in Applicants' opinion, would remedy the deficiencies of the art discussed above, as applied against Claims 15 and 16.

In view of the foregoing amendments and remarks, Applicants respectfully request favorable reconsideration and early passage to issue of the present application.

No petition to extend the time for response to the Office Action is deemed necessary for this Amendment. If, however, such a petition is required to make this Amendment timely filed, then this paper should be considered such a petition and the Commissioner is authorized to charge the requisite petition fee to Deposit Account 50-3939.

Applicants' undersigned attorney may be reached in our New York office by telephone at (212) 218-2100. All correspondence should continue to be directed to our below listed address.

Respectfully submitted,

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